

§ 80.1342

40 CFR Ch. I (7–1–10 Edition)

(1) If approved, all refineries of the refiner may defer meeting the standard specified in § 80.1230(a) until the annual averaging period beginning January 1, 2015, and the standard specified in § 80.1230(b) until the averaging period beginning July 1, 2016.

(2) If disapproved, all refineries of the refiner must meet the standard specified in § 80.1230(a) beginning with the annual averaging period beginning January 1, 2011, and must meet the standard specified in § 80.1230(b) beginning with the averaging period beginning July 1, 2012.

(f) If EPA finds that a refiner provided false or inaccurate information on its application for small refiner status, the refiner's small refiner status will be void *ab initio*.

(g) Prior to January 1, 2014, and upon notification to EPA, a small refiner approved per this section may withdraw its status as a small refiner. Effective on January 1 of the year following such notification, the small refiner will become subject to the standards at § 80.1230.

§ 80.1342 What compliance options are available to small refiners under this subpart?

(a) A refiner that has been approved as a small refiner under § 80.1340 may—

(1)(i) Defer meeting the standard specified in § 80.1230(a) until the annual averaging period beginning January 1, 2015; or

(ii) Meet the standard specified in § 80.1230(a) in any annual averaging period from 2011 through 2014, inclusive, provided it notifies EPA in writing no later than November 15 prior to the year in which it will produce compliant gasoline.

(2)(i) Defer meeting the standard specified in § 80.1230(b) until the averaging period beginning July 1, 2016; or

(ii) Meet the standard specified in § 80.1230(b) in any averaging period specified in § 80.1230(b)(3) prior to the averaging period beginning July 1, 2016 provided it notifies EPA in writing no later than November 15 prior to the year in which it will produce compliant gasoline.

(b) Any refiner that makes an election under paragraphs (a)(1) or (a)(2) of this section must comply with the ap-

plicable benzene standards at § 80.1230 beginning with the first averaging period subsequent to the status change.

(c) The provisions of paragraph (a) of this section shall apply separately for each of an approved small refiner's refineries.

§ 80.1343 What hardship relief provisions are available only to small refiners?

(a)(1) In the case of a small refiner approved under § 80.1340 for which compliance with the requirement at § 80.1230(a) would be feasible only through the purchase of credits, but for whom purchase of credits is not practically or economically feasible, EPA may approve a delay of the requirements applicable to the first compliance period for that refiner for up to two years.

(2) No delay in accordance with paragraph (a) of this section will be granted to any small refiner prior to the EPA issuing a review of the credit program.

(3) A small refiner may request one or more extensions of an approved delay if it can continue to demonstrate extreme difficulty in achieving compliance, through the use of credits, with the annual average benzene standard at § 80.1230(a).

(b) In the case of a small refiner approved under § 80.1340 for which compliance with the maximum average benzene requirement at § 80.1230(b) is not feasible, the refiner may apply for hardship relief under § 80.1335.

§ 80.1344 What provisions are available to a non-small refiner that acquires one or more of a small refiner's refineries?

(a) In the case of a refiner that is not an approved small refiner under § 80.1340 and that acquires a refinery from a small refiner approved under § 80.1340, the small refiner provisions of the gasoline benzene program of this subpart continue to apply to the acquired refinery for a period of up to 30 months from the date of acquisition of the refinery. In no case shall this period extend beyond December 31, 2014.

(b) A refiner may apply to EPA for up to an additional six months to comply with the standards of § 80.1230 for the acquired refinery if it believes that more than 30 months would be required

for the necessary engineering, permitting, construction, and start-up work to be completed. Such applications must include detailed technical information supporting the need for additional time. EPA will base a decision to approve additional time on information provided by the refiner and on other relevant information. In no case shall this period extend beyond December 31, 2014.

(c) A refiner that acquires a refinery from a small refiner approved per § 80.1340 shall notify EPA in writing no later than 20 days following the acquisition.

SAMPLING, TESTING AND RETENTION REQUIREMENTS

§ 80.1347 What are the sampling and testing requirements for refiners and importers?

(a) *Sample and test each batch of gasoline.* (1) The sampling and testing requirements specified in subpart D for reformulated gasoline shall continue to apply to reformulated gasoline and shall be extended to conventional gasoline (CG) for the purpose of complying with the benzene requirements of this subpart, except as modified by paragraphs (a)(2), (a)(3) and (a)(4) of this section.

(2) Refiners and importers shall collect a representative sample from each batch of gasoline produced or imported, according to the earliest applicable date in the following schedule:

(i) Beginning January 1, 2011;

(ii) Beginning January 1, 2015 for small refiners approved under § 80.1340;

(iii) Beginning January 1 of the year prior to 2015 in which a small refiner approved under § 80.1340 has opted, per § 80.1342(a), to begin meeting the standards at § 80.1230;

(iv) Beginning June 1, 2007, for any refinery planning to generate early credits for the averaging period specified at § 80.1275(b)(1);

(v) Beginning January 1 of each averaging period specified at § 80.1275(b)(2) or (b)(3) for which the refinery plans to generate early credits;

(vi) Beginning January 1 of the year, per § 80.1334(c)(1), in which a refinery approved for early compliance under § 80.1334 opts to begin early compliance. The provisions shall only apply to the

type of gasoline, RFG or CG, for which early compliance was approved.

(3)(i) Each sample shall be tested in accordance with the methodology specified at § 80.46(e) to determine its benzene concentration for compliance with the requirements of this subpart.

(ii) Independent sample analysis, under § 80.65(f), is not required for conventional gasoline.

(4) Any refiner or importer may release CG prior to obtaining the test results for benzene required under paragraph (a)(1) of this section.

(5) *Exclusion of previously certified gasoline.*

(i) Any refiner who uses previously certified reformulated or conventional gasoline or RBOB to produce conventional gasoline at a refinery, must exclude the previously certified gasoline ("PCG") for purposes of demonstrating compliance with the benzene standards at § 80.1230.

(ii) To accomplish the exclusion required in paragraph (a)(5)(i) of this section, the refiner must determine the volume and benzene content of the previously certified gasoline used at the refinery and the volume and benzene content of gasoline produced at the refinery, and use the compliance calculation procedures in paragraphs (a)(5)(iii) and (a)(5)(iv) of this section.

(iii) For each batch of previously certified gasoline that is used to produce conventional gasoline the refiner must include the volume and benzene content of the previously certified gasoline as a negative volume and a negative benzene content in the refiner's compliance calculations in accordance with the requirements at § 80.1238.

(iv) For each batch of conventional gasoline produced at the refinery using previously certified gasoline, the refiner must determine the volume and benzene content and include each batch in the refinery's compliance calculations at § 80.1240 without regard to the presence of previously certified gasoline in the batch.

(v) The refiner must use any previously certified gasoline that it includes as a negative batch in its compliance calculations pursuant to § 80.1240 as a component in gasoline production during the annual averaging period in which the previously